

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
FRESNO COUNTY WATER WORKS DISTRICT NO. 18
PROVIDING FOR PROJECT WATER SERVICE
FROM FRIANT DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble.....	1
	Explanatory Recitals.....	1-5
1	Definitions	5-9
2	Term of Contract	10-12
3	Water to be Made Available and Delivered to the Contractor	12-17
4	Time for Delivery of Water	18-20
5	Point of Diversion and Responsibility for Distribution of Water	20-22
6	Measurement of Water Within the Service Area	22-24
7	Rates and Method of Payment for Water	24-29
8	Non-Interest Bearing Operation and Maintenance Deficits	30
9	Sales, Transfers, or Exchanges of Water	30-31
10	Application of Payments and Adjustments	31-32
11	Temporary Reductions--Return Flows	32-33
12	Constraints on the Availability of Water	33-36
13	Unavoidable Groundwater Percolation	36
14	Rules and Regulations	36-37
15	Water and Air Pollution Control	37
16	Quality of Water	37-38
17	Water Acquired by the Contractor Other Than From the United States	38-40
18	Opinions and Determinations	40
19	Coordination and Cooperation	40-42
20	Charges for Delinquent Payments	42-43
21	Equal Opportunity	43-44
22	General Obligation--Benefits Conditioned Upon Payment	44

23	Compliance With Civil Rights Laws and Regulations	44-45
----	---	-------

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
24	Privacy Act Compliance	45
25	Contractor to Pay Certain Miscellaneous Costs	45
26	Water Conservation	45-47
27	Existing or Acquired Water or Water Rights	47
28	Operation and Maintenance by Non-Federal Entity	47-49
29	Contingent on Appropriation or Allotment of Funds	49
30	Books, Records, and Reports	49-50
31	Assignment Limited--Successors and Assigns Obligated	50
32	Severability	50-51
33	Resolution of Disputes	51-52
34	Officials Not to Benefit	52
35	Changes in Contractor's Service Area	52
36	Federal Laws.....	53
37	Notices.....	53
38	Confirmation of Contract	53
	Signature Page	
	Exhibit A	
	Exhibit B	

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 FRESNO COUNTY WATER WORKS DISTRICT NO. 18
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20th day of January, 2001, in pursuance generally
11 of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but
12 not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
14 October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of
15 the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal
16 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United
17 States, and FRESNO COUNTY WATER WORKS DISTRICT NO. 18, hereinafter referred to as the
18 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the
19 laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley Project,
23 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,
24 municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and

25 distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the
26 Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

27 [2nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake)
28 and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division facilities,
29 which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;
30 and

31 [3rd] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United
32 States has acquired water rights and other rights to the flows of the San Joaquin River, including without
33 limitation the permits issued as the result of Decision 935 by the California State Water Resource Control
34 Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the
35 Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton
36 Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division;
37 and

38 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water
39 developed through the exercise of the rights described in the third (3rd) Explanatory Recital of this Contract;
40 and

41 [4th] WHEREAS, the Contractor and the United States entered into Contract
42 No. 14-06-200-5904, as amended, which established terms for the delivery to the Contractor of Project
43 Water from the Friant Division from August 17, 1956, to February 28, 1997; and

44 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1)
45 of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal
46 contract(s) identified as Contract No(s). 14-06-200-5904-IR1, IR2, IR3, and IR4, the current of which is
47 hereinafter referred to as the Existing Contract, which provided for the continued water service to the
48 Contractor from December 1, 2000, through February 28, 2001; and

49 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and
50 existing long-term Project Water service contracts following completion of appropriate environmental
51 documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National
52 Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA
53 and the potential renewal of all existing contracts for Project Water; and

54 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
55 environmental review necessary to provide for long-term renewal of the Existing Contract; and

56 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract,
57 pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of
58 California, for water service from the Central Valley Project; and

59 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its
60 obligations under the Existing Contract; and

61 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer
62 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use
63 and/or has demonstrated projected future demand for water use such that the Contractor has the capability

64 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made
65 available to it pursuant to this Contract; and

66 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban
67 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as
68 an essential portion of its water supply; and

69 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
70 Contractor's, depend upon the continued availability of water, including water service from the Central
71 Valley Project; and

72 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to
73 pursue measures to improve water supply, water quality, and reliability of the Project for all Project
74 purposes; and

75 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide
76 for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central
77 Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a
78 reasonable balance among competing demands for use of Project Water; and to comply with all applicable
79 environmental statutes, all consistent with the legal obligations of the United States relative to the Central
80 Valley Project; and

81 [15th] Omitted;

82 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
83 undependable Class 2 Water in their service areas to, among other things, assist in the management and

84 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
85 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize
86 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable
87 and beneficial use of the water; and

88 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to
89 the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the
90 Explanatory Recital immediately above; and

91 [16th] WHEREAS, the United States and the Contractor are willing to enter into this Contract
92 pursuant to Federal Reclamation law on the terms and conditions set forth below;

93 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it
94 is hereby mutually agreed by the parties hereto as follows:

95 DEFINITIONS

96 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the
97 intent of the parties as expressed in this Contract, the term:

98 (a) "Calendar Year" shall mean the period January 1 through December 31, both dates
99 inclusive;

100 (b) "Charges" shall mean the payments required by Federal Reclamation law in addition
101 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the
102 Contracting Officer pursuant to this Contract;

103 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through

104 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of
105 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as
106 a dependable water supply during each Year;

107 (b3) "Class 2 Water" shall mean that supply of water which can be made available
108 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for delivery from
109 Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of Class 1 Water.
110 Because of its uncertainty as to availability and time of occurrence, such water will be undependable in
111 character and will be furnished only if, as, and when it can be made available as determined by the
112 Contracting Officer;

113 (c) "Condition of Shortage" shall mean a condition respecting the Project during any
114 Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

115 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
116 representative acting pursuant to this Contract or applicable Reclamation law or regulation;

117 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the
118 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of Article 3 of
119 this Contract;

120 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
121 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which
122 may be modified from time to time in accordance with Article 35 of this Contract without amendment of this

123 Contract;

124 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title XXXIV of
125 the Act of October 30, 1992 (106 Stat. 4706);

126 (h) Omitted;

127 (i) Omitted;

128 (j) Omitted;

129 (k) Omitted;

130 (l) Omitted;

131 (m) "Irrigation Water" shall mean water made available from the Project that is used
132 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and
133 watering of livestock.

134 (n) Omitted;

135 (n2) "Long Term Historic Average" shall mean the average of the final forecast of Water
136 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4th)
137 and fifth (5th) Explanatory Recitals of this Contract;

138 (o) "Municipal and Industrial (M&I) Water" shall mean water made available from the
139 Project other than Irrigation Water made available to the Contractor. M&I Water shall include water used
140 for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which
141 are kept for personal enjoyment or water delivered to land holdings operated in units of less than five (5)

142 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water
143 delivered to any such landholding is a use described in subdivision (m) of this Article;

144 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined by
145 the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in
146 service, including, O&M deficits funded, less payments, over such periods as may be required under
147 Federal Reclamation law with interest accruing from the dates such costs were first incurred plus the
148 applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full
149 Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the
150 RRA;

151 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care,
152 control, operation, repair, replacement (other than Capital replacement), and maintenance of Project
153 facilities;

154 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority,
155 a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant Division
156 facilities pursuant to an agreement with the United States, and which may have funding obligations with
157 respect thereto;

158 (s) "Project" shall mean the Central Valley Project owned by the United States and
159 managed by the Department of the Interior, Bureau of Reclamation;

160 (t) "Project Contractors" shall mean all parties who have water service contracts for
161 Project Water from the Project with the United States pursuant to Federal Reclamation law;

162 (u) "Project Water" shall mean all water that is developed, diverted, stored, or

163 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the
164 terms and conditions of water rights acquired pursuant to California law;

165 (v) "Rates" shall mean the payments determined annually by the Contracting Officer in
166 accordance with the then current applicable water ratesetting policies for the Project, as described in
167 subdivision (a) of Article 7 of this Contract;

168 (w) Omitted;

169 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor, or
170 an authorized representative acting pursuant to any authority of the Secretary and through any agency of the
171 Department of the Interior;

172 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for each
173 acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

174 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for use
175 by the Contractor at the point(s) of delivery approved by the Contracting Officer;

176 (aa) "Water Made Available" shall mean the estimated amount of Project Water that can
177 be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to
178 subdivision (a) of Article 4 of this Contract;

179 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor for
180 which times and quantities for delivery have been established by the Contractor and Contracting Officer,
181 pursuant to subdivision (b) of Article 4 of this Contract; and

182 (cc) "Year" shall mean the period from and including March 1 of each Calendar Year
183 through the last day of February of the following Calendar Year.

184

TERM OF CONTRACT

185

2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the

186

event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit

187

a request for renewal in writing to the Contracting Officer no later than two (2) years prior to

188

the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of M&I

189

Water to the Contractor shall be governed by subdivision (c) of this Article.

190

(b) Omitted.

191

(c) Provided, the Contractor is complying with all terms and conditions of this Contract

192

and all legal obligations of the Contractor, if any, set forth in an enforceable court order, final judgment

193

and/or settlement relating to restoration of the San Joaquin River, this Contract, insofar as it pertains to the

194

furnishing of M&I Water to the Contractor, shall be renewed for a period of twenty-five (25) years and

195

thereafter shall be renewed for successive periods of up to forty (40) years each, which periods shall be

196

consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to

197

the parties and consistent with Federal and State law. The present Reclamation-wide policy, dated March

198

20, 2000, provides that the term of such contracts shall be no more than twenty-five (25) years each,

199

subject to a variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded

200

the opportunity to comment to the Contracting Officer on the proposed adoption and application of any

201

revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would affect the term

202

of any subsequent renewal contract with the Contractor for the furnishing of M&I Water.

203 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
204 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees
205 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at
206 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision
207 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under
208 subsection (c)(1) of Section 9, of the Reclamation Project Act of 1939, subject to applicable Federal law
209 and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A
210 condition for such conversion to occur shall be a determination by the Contracting Officer that, account
211 being taken of the amount credited to return by the Contractor as provided for under Reclamation law, the
212 remaining amount of construction costs assignable for ultimate return by the Contractor can probably be
213 repaid to the United States within the term of a contract under said subsection 9(c)(1). If the remaining
214 amount of costs that are properly assignable to the Contractor cannot be determined by December 31,
215 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a
216 determination could not be made. Further, the Contracting Officer shall make such a determination as soon
217 thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set
218 out above, conversion to a contract under said subsection 9(c)(1). In the event such determination of costs
219 has not been made at a time which allows conversion of this Contract during the term of this Contract or the
220 Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in
221 any subsequent renewal contract as described in Article 2(c) a provision that carries forth in substantially
222 identical terms the provisions of this Article 2(d). In the event the Contracting Officer is able to make a

223 determination of the remaining amount of costs that are properly assignable to the Contractor before
224 December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has such ability.

225 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

226 3. (a) During each Year, consistent with all applicable State water rights, permits, and
227 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
228 Contracting Officer shall make available for delivery to the Contractor 150 acre-feet of Class 1 Water for
229 M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall
230 be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

231 (b) Omitted.

232 (c) The Contractor shall utilize the Project Water in accordance with all applicable legal
233 requirements.

234 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
235 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking
236 programs, surface water storage programs, and other similar programs utilizing Project Water or other water
237 furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent
238 with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That
239 any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted
240 pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates
241 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of
242 Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law.

243 Groundwater recharge programs, groundwater banking programs, surface water storage programs, and
244 other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted
245 outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer,
246 which approval will be based upon environmental documentation, Project Water rights, and Project
247 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
248 guidelines.

249 (e) The Contractor shall comply with requirements applicable to the Contractor in
250 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
251 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the
252 Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements
253 imposed by environmental documentation applicable to the Contractor and within its legal authority to
254 implement regarding specific activities. Nothing herein shall be construed to prevent the Contractor from
255 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion
256 or other environmental documentation referred to in this Article.

257 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
258 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a
259 determination whether Project Water, or other water available to the Project, can be made available to the
260 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without
261 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
262 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of

263 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available
264 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability
265 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter
266 meet with the Contractor and other Project Contractors capable of taking such water to determine the most
267 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of
268 such water, the Contracting Officer shall make such water available to the Contractor in accordance with
269 applicable statutes, regulations, guidelines, and policies.

270 (g) The Contractor may request permission to reschedule for use during the subsequent
271 Year some or all of the Water Made Available to the Contractor during the current Year referred to as
272 “carryover.” The Contractor may request permission to use during the current Year a quantity of Project
273 Water which may be made available by the United States to the Contractor during the subsequent Year
274 referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance
275 with applicable statutes, regulations, guidelines, and policies.

276 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable State
277 law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof
278 and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof
279 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any
280 renewals thereof. Nothing in the preceding sentence shall affect the

281 Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this

282 Contract or applicable provisions of any subsequent renewal contracts.

283 (i) Project Water furnished to the Contractor pursuant to this Contract may be
284 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract
285 upon written approval by the Contracting Officer in accordance with the terms and conditions of such
286 approval.

287 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and
288 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water
289 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in
290 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and
291 other rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the
292 Contracting Officer retains the right to object to the substance of the Contractor's position in such a
293 proceeding.

294 (k) Project Water furnished to the Contractor during any month designated in a
295 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be
296 deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is
297 called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to
298 the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor
299 diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in
300 the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be
301 charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the

302 extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to
303 account for such additional diversions, such additional diversions shall be charged against the Contractor's
304 remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining
305 Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such
306 additional diversions, such additional diversions shall be charged first against the Contractor's available
307 Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the
308 following
309 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of this
310 Contract.

311 (l) If the Contracting Officer determines there is a Project Water supply available at
312 Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or
313 infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the
314 Contractor and others under Section 215 of the RRA pursuant to the priorities specified below if the
315 Contractor enters into a temporary contract with the United States not to exceed one (1) year for the
316 delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations.
317 Such water may be identified by the Contractor either (i) as additional water to supplement the supply of
318 Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written
319 notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply
320 available pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or to Excess
321 Lands in accordance with this Article. The Contracting Officer shall make water determined to be available

322 pursuant to this subsection according to the following priorities: first, to long-term Contractors for Class 1
323 Water and/or Class 2 Water within the Friant Division; second, to long-term Contractors in the Cross
324 Valley Division of the Project. The Contracting Officer will consider and seek to accommodate requests
325 from other parties
326 for Section 215 Water for use within the area identified as the Friant Division service area in the
327 environmental assessment developed in connection with the execution of this Contract.

328 (m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting
329 Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or
330 otherwise interfere with any term or condition of the water rights and other rights referred in the third (3rd)
331 Explanatory Recital of this Contract.

332 (n) The rights of the Contractor under this Contract are subject to the terms of the
333 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
334 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange
335 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the
336 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of
337 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself
338 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may
339 become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta
340 those quantities required to satisfy the obligations of the United States under said Exchange Contract and
341 under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated

342 July 27, 1939).

343 TIME FOR DELIVERY OF WATER

344 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
345 announce the Contracting Officer's expected declaration of the Water Made Available. The declaration will
346 be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic
347 conditions and a new declaration with changes, if any, to the Water Made Available will be made. The
348 Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant
349 supporting information, upon the written request of the Contractor. Concurrently with the declaration of the
350 Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term
351 Historic Average. The declaration of Project operations will be expressed in terms of both Water Made
352 Available and the Long Term Historic Average.

353 (b) On or before each March 1 and at such other times as necessary, the Contractor
354 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing
355 the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to
356 this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable
357 means to deliver Project Water according to the approved schedule for the Year commencing on such
358 March 1.

359 (c) The Contractor shall not schedule Project Water in excess of the quantity of Project
360 Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area,

361 or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

362

363 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United
364 States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the
365 Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the
366 Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested
367 change(s) is/are to be implemented; Provided, That the total amount of water requested in that schedule or
368 revision does not exceed the quantities announced by the Contracting Officer pursuant to the provisions of
369 subdivision (a) of Article 3, and the Contracting Officer determines that there will be sufficient capacity
370 available in the appropriate Friant Division facilities to deliver the water in accordance with that schedule:
371 Provided, further, That the Contractor shall not schedule the delivery of any water during any period as to
372 which the Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project
373 facilities required to make deliveries to the Contractor will not be in operation because of scheduled O&M.

374 (e) The Contractor may, during the period from and including November 1 of each
375 Year through and including the last day of February of that Year, request delivery of any amount of the
376 Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.
377 The Contractor may, during the period from and including January 1 of each Year (or such earlier date as
378 may be determined by the Contracting Officer) through and including the last day of February of that Year,
379 request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available
380 to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request

381 must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the
382 approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate
383 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of
384 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a
385 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to
386 the extent such water is available and to the extent such deliveries will not interfere with the delivery of
387 Project Water entitlements to other Friant Division Contractors or the physical maintenance of the Project
388 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
389 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
390 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the
391 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following
392 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first
393 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the
394 availability of the following Year water supplies as determined by the Contracting Officer.

395 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

396 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract
397 shall be delivered to the Contractor at a point or points of delivery either on Project facilities or another
398 location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

399 (b) The Contracting Officer, the Operating Non-Federal Entity, or other appropriate
400 entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Friant Division

401 facilities to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision
402 (a) of this Article.

403 (c) The Contractor shall not deliver Project Water to land outside the Contractor's
404 Service Area unless approved in advance by the Contracting Officer..

405 (d) All Water Delivered to the Contractor pursuant to this Contract shall be measured
406 and recorded with equipment furnished, installed, operated, and maintained by the United States, the
407 Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer
408 (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a)
409 of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or
410 cause to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such
411 measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of
412 time when accurate measurements have not been made, the Contracting Officer shall consult with the
413 Contractor and the responsible Operating Non-Federal Entity prior to making a final determination of the
414 quantity delivered for that period of time.

415 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
416 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to
417 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
418 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
419 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,
420 including property damage, personal injury, or death arising out of or connected with the control, carriage,

421 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any
422 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,
423 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of
424 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
425 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;
426 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any
427 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
428 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That
429 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning
430 facility(ies) from which the damage claim arose.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor established a measurement program satisfactory to the Contracting
433 Officer, all surface water delivered for municipal and industrial purposes is measured at each municipal and
434 industrial service connection. The water measuring devices or water measuring methods of comparable
435 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for
436 installing, operating, and maintaining and repairing all such measuring devices and implementing all such
437 water measuring methods at no cost to the United States. The Contractor shall use the information obtained
438 from such water measuring devices or water measuring methods to ensure its proper management of the
439 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
440 for municipal and industrial purposes by customer class as defined in the Contractor's water conservation

441 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the
442 Contractor from establishing and collecting any charges, assessments, or other revenues authorized by
443 California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
444 report described in subdivision (c) of Article 26 of this Contract.

445 (b) To the extent the information has not otherwise been provided, upon execution of
446 this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
447 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of
448 this Article and identifying the municipal and industrial service connections or alternative measurement
449 programs approved by the Contracting Officer, at which such measurement devices or water measuring
450 methods are being used, and, if applicable, identifying the locations at which such devices and/or methods
451 are not yet being used including a time schedule for implementation at such locations. The Contracting
452 Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and necessary
453 modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's
454 report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the
455 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties
456 shall within sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest
457 practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as
458 required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

459 (c) All new surface water delivery systems installed within the Contractor's Service
460 Area after the effective date of this Contract shall also comply with the measurement provisions described in
461 subdivision (a) of this Article.

462 (d) The Contractor shall inform the Contracting Officer and the State of California in
463 writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's
464 Service Area during the previous Year.

465 (e) The Contractor shall inform the Contracting Officer and the Operating
466 Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of M&I
467 Water taken during the preceding month.

468 RATES AND METHOD OF PAYMENT FOR WATER

469 7. (a) The Contractor shall pay the United States as provided in this Article for all
470 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with the
471 Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
472 modified, or superseded only through a public notice and comment procedure; (ii) applicable Reclamation
473 law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
474 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in writing
475 by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Components
476 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised
477 annually.

478 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
479 Tiered Pricing Components as follows:

480 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide
481 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of

482 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such
483 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such
484 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the
485 Contractor in writing of the Charges to be in effect during the period
486 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
487 notification shall revise Exhibit "B."

488 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
489 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project Water
490 for the following Year and the computations and cost allocations upon which those Rates are based. The
491 Contractor shall be allowed not less than two (2) months to review and comment on such computations and
492 cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the
493 Contractor with the final Rates and Tiered Pricing Components to be in effect for the upcoming Year, and
494 such notification shall revise Exhibit "B."

495 (c) At the time the Contractor submits the initial schedule for the delivery of Project
496 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an
497 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)
498 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
499 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before
500 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United
501 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered

502 pursuant to this Contract during the second month immediately following. Adjustments between advance
503 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the
504 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to
505 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during
506 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure
507 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the
508 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
509 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
510 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.
511 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of
512 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
513 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried
514 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of
515 February.

516 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision
517 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered
518 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,
519 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to
520 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of M&I Water
521 Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-

522 Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water
523 delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the Contractor,
524 and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting Officer (as
525 applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be
526 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
527 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment
528 of payments due to the United States for Charges for the next month. Any amount to be paid for past due
529 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this
530 Contract.

531 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or (g)
532 of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes,
533 associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the
534 Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the
535 otherwise applicable Rate for M&I Water under subdivision (a) of this Article.

536 (f) Payments to be made by the Contractor to the United States under this Contract
537 may be paid from any revenues available to the Contractor.

538 (g) All revenues received by the United States from the Contractor relating to the
539 delivery of Project Water or the delivery of non-project water through Project facilities shall be allocated
540 and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the
541 then current Project ratesetting policies for M&I Water.

542 (h) The Contracting Officer shall keep its accounts pertaining to the administration of the

543 financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so
544 as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon
545 request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor
546 expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water
547 delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to
548 resolve any discrepancies or disputes relating to accountings, reports, or information.

549 (i) The parties acknowledge and agree that the efficient administration of this Contract
550 is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and
551 procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and
552 allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties,
553 it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and
554 procedures for any of those purposes while this Contract is in effect without amending this Contract.

555 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and
556 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the
557 month following the month of delivery the Contractor shall make an additional payment to the United States
558 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the
559 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but
560 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference
561 between the Rate established under subdivision (a) of Article 7 of this Contract and the M&I Full Cost
562 Water Rate. The Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2

563 Water which exceeds ninety (90%) percent of the Contract

564 Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7 of this
565 Contract and (ii) the M&I Full Cost Water Rate.

566 (2) Omitted.

567 (3) For purposes of determining the applicability of the Tiered Pricing

568 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor
569 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

570 (k) For the term of this Contract, Rates under the respective ratesetting policies will be
571 established to recover only reimbursable “operation and maintenance” (including any deficits) and capital
572 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,
573 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant
574 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer’s
575 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an
576 opportunity to discuss the nature, need, and impact of the proposed change.

577 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the
578 Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted upward or
579 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the
580 transferee’s point of delivery in accordance with the then applicable CVP Ratesetting Policy.

581 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting

582 Officer is authorized to adjust determination of ability to pay every five (5) years.

583 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

584 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
585 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall have no
586 further liability therefor.

587 SALES, TRANSFERS, OR EXCHANGES OF WATER

588 9. (a) The right to receive Project Water provided for in this Contract may be sold,
589 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such
590 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or
591 regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take
592 place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b)
593 of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with
594 appropriate environmental documentation including but not limited to the National Environmental Policy Act
595 and the Endangered Species Act. Such environmental documentation should include, as appropriate, an
596 analysis of groundwater impacts and economic and social effects, including environmental justice, of the
597 proposed water transfers on both the transferor and transferee.

598 (b) In order to facilitate efficient water management by means of water transfers of the
599 type historically carried out among Project Contractors located within the same geographical area and to
600 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,

601 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but
602 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual
603 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers
604 comply with applicable law. Following the completion of the environmental documentation, such transfers
605 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but
606 shall not require prior written approval by the Contracting Officer. Such environmental documentation and
607 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as
608 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental
609 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically
610 transferred within the same geographical area.

611 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
612 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I
613 use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or
614 fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife
615 refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur
616 between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new
617 construction or modifications to facilities and be between existing Project Contractors and/or the Contractor
618 and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and
619 local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as
620 defined under Federal law.

621 APPLICATION OF PAYMENTS AND ADJUSTMENTS

622 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
623 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the
624 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand
625 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
626 overpayment at the option of the Contractor, may be credited against amounts to become due to the United
627 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
628 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
629 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)
630 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
631 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
632 overpayment was made.

633 (b) All advances for miscellaneous costs incurred for work requested by the Contractor
634 pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been
635 completed. If the advances exceed the actual costs incurred, the difference will be refunded to the
636 Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the
637 additional costs pursuant to Article 25 of this Contract.

638 TEMPORARY REDUCTIONS--RETURN FLOWS

639 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
640 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals
641 thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable

642 efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

643 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
644 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes
645 of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part
646 thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting
647 Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary
648 discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided,
649 That the United States shall use its best efforts to avoid any discontinuance or reduction in such service.
650 Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the
651 United States will, if possible, deliver the quantity of Project Water which would have been delivered
652 hereunder in the absence of such discontinuance or reduction.

653 (c) The United States reserves the right to all seepage and return flow water derived
654 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's
655 Service Area; Provided, That this shall not be construed as claiming for the United States any right as
656 seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground
657 storage either being put to reasonable and beneficial use pursuant to this Contract within the Contractor's
658 Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this
659 subdivision, groundwater recharge, groundwater banking and all similar groundwater activities will be
660 deemed to be underground storage.

661 CONSTRAINTS ON THE AVAILABILITY OF WATER

662 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means
663 to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor
664 pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage
665 appears probable, the Contracting Officer will notify the Contractor of said determination as soon as
666 practicable.

667 (b) If there is a Condition of Shortage because of errors in physical operations of the
668 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the
669 Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this
670 Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for
671 any damage, direct or indirect, arising therefrom.

672 (c) The United States shall not execute contracts which together with this Contract, shall
673 in the aggregate provide for furnishing during the life of this Contract or any renewals hereof Class 1 Water
674 in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year;
675 Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water
676 contracts shall not prohibit the United States from entering into temporary contracts of one year or less in
677 duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules
678 as may be submitted by all Friant Division long-term water service Contractors entitled to receive Class 1
679 Water and/or Class 2 Water under their water service contracts. Nothing in this subdivision shall limit the
680 Contracting Officer's ability to take actions that result in the availability of new water supplies to be used for
681 Project purposes and allocating such new supplies; Provided, That the Contracting Officer shall not take

682 such actions until after consultation with the Friant Division Project Contractors.

683 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or any
684 other contract for water service heretofore or hereafter entered into any Year unless and until the
685 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c)
686 of this Article will be available for delivery in said Year. If the Contracting Officer determines there is or will
687 be a shortage in any Year in the quantity of Class 1 Water available for delivery, the Contracting Officer
688 shall apportion the available Class 1 Water among all Contractors
689 entitled to receive such water that will be made available at Friant Dam in accordance with the following:

690 (1) A determination shall be made of the total quantity of Class 1 Water at
691 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so
692 determined being herein referred to as the available supply.

693 (2) The total available Class 1 supply shall be divided by the Class 1 Water
694 contractual commitments, the quotient thus obtained being herein referred to as the Class 1 apportionment
695 coefficient.

696 (3) The total quantity of Class 1 Water under Article 3 of this Contract shall be
697 multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of Class 1 Water
698 required to be delivered by the Contracting Officer to the Contractor for the respective Year, but in no
699 event shall such amount exceed the total quantity of Class 1 Water specified in subdivision (a) of Article 3 of
700 this Contract.

701 (e) If the Contracting Officer determines there is less than the quantity of Class 2 Water
702 which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this Contract, the
703 quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting Officer will be
704 determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of this Article
705 substituting the term "Class 2" for the term "Class 1."

706 (f) In the event that in any Year there is made available to the Contractor, by reason of
707 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any
708 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than
709 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be
710 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for
711 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

712 UNAVOIDABLE GROUNDWATER PERCOLATION

713 13. Omitted.

714 RULES AND REGULATIONS

715 14. (a) The parties agree that the delivery of Water or use of Federal facilities pursuant to
716 this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and
717 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

718 (b) The terms of this Contract are subject to any enforceable order, judgment and/or
719 settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary
720 to effectuate or facilitate any final order, judgment or settlement in said litigation.

721 (c) The parties acknowledge that, as of the effective date of this Contract, active

722 settlement discussions are underway in NRDC v. Patterson between Friant Division water service
723 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual
724 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually
725 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and
726 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains
727 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining
728 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting
729 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor
730 has been actively participating, and intends to continue to participate in such settlement discussions. Except
731 as provided in this Contract, this Contract does not add to the obligations of the parties, if any, relating to
732 the San Joaquin River. This Contract does not limit or detract from the obligations of the parties, if any,
733 relating to the San Joaquin River.

734 WATER AND AIR POLLUTION CONTROL

735 15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air
736 pollution laws and regulations of the United States and the State of California, and shall obtain all required
737 permits or licenses from the appropriate Federal, State, or local authorities.

738 QUALITY OF WATER

739 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this
740 Contract shall be operated and maintained to enable the United States to deliver Project Water to the
741 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August
742 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or

743 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment
744 facilities to maintain or to improve the quality of Water Delivered to the Contractor

745 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
746 Contractor pursuant to this Contract.

747 (b) The Operation and Maintenance of Project facilities shall be performed in such
748 manner as is practicable to maintain the quality of raw water made available through such facilities at the
749 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
750 responsible for compliance with all State and Federal water quality standards applicable to surface and
751 subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or
752 Project Water provided by the Contractor within the Contractor's Service Area.

753 WATER ACQUIRED BY THE Contractor
754 OTHER THAN FROM THE UNITED STATES

755 17. (a) Omitted.

756 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
757 than from the United States or adverse to the Project or its Contractors (i.e., non-Project Water), may be
758 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
759 environmental documentation, with the approval of the Contracting Officer and the execution of any contract
760 determined by the Contracting Officer to be necessary, consistent with the following provisions:

761 (1) The Contractor may introduce non-Project Water into Project facilities and

762 deliver said water to lands within the Subcontractor, subject to payment to the United States and/or to any
763 applicable Operating Non-Federal Entity of an appropriate rate as determined by the CVP Ratesetting
764 Policy and the Reclamation Reform Act of 1982, each as amended, modified or superseded from time to
765 time. In addition, if electrical power is required to pump non-Project Water
766 through the facilities, the Contractor shall be responsible for obtaining the necessary power and paying the
767 necessary charges therefor.

768 (2) Delivery of such non-project water in and through Project facilities shall only
769 be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by
770 the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project water service
771 Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project water
772 service Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

773 (3) Neither the United States nor the Operating Non-Federal Entity shall be
774 responsible for control, care or distribution of the non-Project Water before it is introduced into or after it is
775 delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the
776 United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees,
777 from any claim for damage to persons or property, direct or indirect, resulting from Contractor's diversion
778 or extraction of non-Project Water from any source.

779 (4) Diversion of such non-project water into Project facilities shall be consistent
780 with all applicable laws, and if involving groundwater, consistent with any groundwater management plan for
781 the area from which it was extracted.

782 (5) After Project purposes are met, as determined by the Contracting Officer,

783 the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities
784 declared to be available by the Contracting Officer for conveyance and transportation of
785 non-Project Water prior to any such remaining capacity being made available to non-Project Contractors.

786 OPINIONS AND DETERMINATIONS

787 18. (a) Where the terms of this Contract provide for actions to be based upon the opinion
788 or determination of either party to this Contract, said terms shall not be construed as permitting such action
789 to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,
790 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and
791 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
792 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of
793 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable
794 under federal law to any opinion or determination implementing a specific provision of federal law embodied
795 in statute or regulation.

796 (b) The Contracting Officer shall have the right to make determinations necessary to
797 administer this Contract that are consistent with the provisions of this Contract, the laws of the United States
798 and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior.
799 Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

800 COORDINATION AND COOPERATION

801 19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the
802 Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project

803 Contractors, in order to improve the operation and management of the Project. The communication,
804 coordination, and cooperation regarding operations and management shall include, but not be limited to, any
805 action which will or may materially affect the quantity or quality of Project Water supply, the allocation of
806 Project Water supply, and Project financial matters including, but not limited to, budget issues. The
807 communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this
808 Contract. Each party shall retain exclusive decision making authority for all actions, opinion, and
809 determinations to be made by the respective party.

810 (b) Within one-hundred twenty (120) days following the effective date of this Contract,
811 the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with
812 interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
813 amended as necessary separate and apart from this Contract. The goal of this process shall be to provide,
814 to the extent practicable, the means of mutual communication and interaction regarding significant decisions
815 concerning Project operation and management on a
816 real-time basis.

817 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is
818 the intent of the Secretary to improve water supply reliability. To carry out this intent:

819 (1) The Contracting Officer will, at the request of the Contractor, assist in the
820 development of integrated resource management plans for the Contractor. Further, the Contracting Officer
821 will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water
822 quality, and reliability.

823 (2) The Secretary will, as appropriate, pursue program and project
824 implementation and authorization in coordination with Project Contractors to improve the water supply,

825 water quality, and reliability of the Project for all Project purposes.

826 (3) The Secretary will coordinate with Project Contractors and the State of
827 California to seek improved water resource management.

828 (4) The Secretary will coordinate actions of agencies within the Department of
829 the Interior that may impact the availability of water for Project purposes.

830 (5) The Contracting Officer shall periodically, but not less than annually, hold
831 division level meetings to discuss Project operations, division level water management activities, and other
832 issues as appropriate.

833 (d) Without limiting the contractual obligations of the Contracting Officer hereunder,
834 nothing in this Contract shall be construed to limit or constrain the Contracting Officer's ability to
835 communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make
836 decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities, or
837 the Contracting Officer's ability to comply with applicable laws.

838 CHARGES FOR DELINQUENT PAYMENTS

839 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on
840 delinquent installments or payments. When a payment is not received by the due date, the Contractor shall
841 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment
842 becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional
843 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or
844 more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the
845 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt
846 collection services associated with a delinquent payment.

847 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
848 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate

849 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of
850 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain
851 fixed for the duration of the delinquent period.

852 (c) When a partial payment on a delinquent account is received, the amount received
853 shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and
854 finally to the overdue payment.

855 EQUAL OPPORTUNITY

856 21. During the performance of this Contract, the Contractor agrees as follows:

857 (a) The Contractor will not discriminate against any employee or applicant for
858 employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative
859 action to ensure that applicants are employed, and that employees are treated during employment, without
860 regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to,
861 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff
862 or termination, rates of payment or other forms of compensation; and selection for training, including
863 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants
864 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this
865 nondiscrimination clause.

866 (b) The Contractor will, in all solicitations or advertisements for employees placed by or
867 on behalf of the Contractor, state that all qualified applicants will receive consideration for employment
868 without discrimination because of race, color, religion, sex, or national origin.

869 (c) The Contractor will send to each labor union or representative of workers with
870 which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided
871 by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's
872 commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies
873 of the notice in conspicuous places available to employees and applicants for employment.

874 (d) The Contractor will comply with all provisions of Executive Order
875 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the
876 Secretary of Labor.

877 (e) The Contractor will furnish all information and reports required by said amended
878 Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
879 and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of
880 Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

881 (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of
882 this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated,
883 or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government
884 contracts in accordance with procedures authorized in said amended Executive Order, and such other
885 sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation,
886 or order of the Secretary of Labor, or as otherwise provided by law.

887 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every
888 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of
889 Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be
890 binding upon each subcontractor or vendor. The Contractor will take such action with respect to any
891 subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such
892 provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor
893 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such
894 direction, the Contractor may request the United States to enter into such litigation to protect the interests of
895 the United States.

896 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

897 22. (a) The obligation of the Contractor to pay the United States as provided in this
898 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be
899 distributed among the Contractor's water users and notwithstanding the default of individual water users in
900 their obligations to the Contractor.

901 (b) The payment of charges becoming due hereunder is a condition precedent to
902 receiving benefits under this Contract. The United States shall not make water available to the Contractor
903 through Project facilities during any period in which the Contractor may be in arrears in the advance
904 payment of water rates due the United States. The Contractor shall not furnish water made available
905 pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates
906 levied or established by the Contractor.

907 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
908 obligation to require advance payment for water rates which it levies.

909 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

910 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
911 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age

912 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as
913 with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior
914 and/or Bureau of Reclamation.

915 (b) These statutes require that no person in the United States shall, on the grounds of
916 race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or
917 be otherwise subjected to discrimination under any program or activity receiving financial assistance from the
918 Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any
919 measures necessary to implement this obligation, including permitting officials of the United States to inspect
920 premises, programs, and documents.

921 (c) The Contractor makes this agreement in consideration of and for the purpose of
922 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
923 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
924 installment payments after such date on account of arrangements for Federal financial assistance which were
925 approved before such date. The Contractor recognizes and agrees that such Federal assistance will be
926 extended in reliance on the representations and agreements made in this Article, and that the United States
927 reserves the right to seek judicial enforcement thereof.

928 PRIVACY ACT COMPLIANCE

929 24. Omitted.

930 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

931 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the
932 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement
933 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the
934 United States for work requested by the Contractor associated with this Contract plus indirect costs in
935 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in
936 this Article shall not exceed the amount agreed to in
937 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
938 administration.

939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959

WATER CONSERVATION

26. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

960 (c) The Contractor shall submit to the Contracting Officer a report on the status of its
961 implementation of the water conservation plan on the reporting dates specified in the then existing
962 conservation and efficiency criteria established under Federal law.

963 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to
964 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
965 established under Federal law and submit such revised water management plan to the Contracting Officer
966 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets
967 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans
968 established under Federal law.

969 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be
970 described in the Contractor's water conservation plan.

971 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

972 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract
973 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by
974 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be
975 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or
976 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or
977 has available under any other contract pursuant to Federal Reclamation law.

978 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

979 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the

980 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have
981 been transferred to the Operating Non-Federal Entity by separate agreement

982 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
983 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

984 (b) The Contracting Officer has previously notified the Contractor in writing that the
985 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been
986 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the
987 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms
988 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity
989 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including any
990 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or
991 establishes for (i) the Operation and Maintenance of the portion of the Project facilities operated and
992 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the
993 operation, maintenance and replacement costs for physical works and appurtenances associated with the
994 Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of
995 the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and
996 conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such
997 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
998 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the
999 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the

1000 separate agreement identified in subdivision (a) of this Article.

1001 (c) For so long as the Operation and Maintenance of any portion of the Project facilities
1002 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1003 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract
1004 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or
1005 its successor.

1006 (d) In the event the Operation and Maintenance of the Project facilities operated and
1007 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1008 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a
1009 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1010 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project
1011 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification
1012 from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1013 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1014 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1015 29. The expenditure or advance of any money or the performance of any obligation of the
1016 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of
1017 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.
1018 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1019 BOOKS, RECORDS, AND REPORTS

1020 30. (a) The Contractor shall establish and maintain accounts and other books and records
1021 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial
1022 transactions, water supply data, and Project land and right-of-way agreements; water use data; and other
1023 matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting
1024 Officer in such form and on such date or dates as the Contracting Officer may require. Subject to
1025 applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to
1026 examine and make copies of the other party's books and records relating to matters covered by this
1027 Contract.

1028 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,
1029 or other information shall be requested from the Contractor by the Contracting Officer unless such books,
1030 records, or information are reasonably related to the administration or performance of this Contract. Any
1031 such request shall allow the Contractor a reasonable period of time within which to provide the requested
1032 books, records, or information.

1033 (c) At such time as the Contractor provides information to the Contracting Officer
1034 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating
1035 Non-Federal Entity.

1036 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1037 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of
1038 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid
1039 until approved in writing by the Contracting Officer.

1040 (b) The assignment of any right or interest in this Contract by either party shall not
1041 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of
1042 said other party.

1043 (c) The Contracting Officer shall not unreasonably condition or withhold approval of
1044 any proposed assignment.

1045

SEVERABILITY

1046

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a

1047

person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or

1048

other form of organization whose primary function is to represent parties to Project contracts, brings an

1049

action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in

1050

this Contract and said person, entity, association, or organization obtains a final court decision holding that

1051

such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in

1052

support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days

1053

of the date of such final court decision identify by mutual agreement the provisions in this Contract which

1054

must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).

1055

The time periods specified above may be extended by mutual agreement of the parties. Pending the

1056

completion of the actions designated above, to the extent it can do so without violating any applicable

1057

provisions of law, the United States shall continue to make the quantities of Project Water specified in this

1058

Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be

1059

legally invalid or unenforceable in the final court decision.

1060

RESOLUTION OF DISPUTES

1061

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights

1062

and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to

1063

the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department

1064

of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such

1065 action; Provided, That such notice shall not be required where a delay in commencing an action would
1066 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the
1067 Contractor and the Contracting Officer shall meet and confer in

1068 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
1069 abridge any right or remedy that the Contractor or the United States may have.

1070 OFFICIALS NOT TO BENEFIT

1071 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1072 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as
1073 other water users or landowners.

1074 CHANGES IN CONTRACTOR'S SERVICE AREA

1075 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service
1076 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1077 except upon the Contracting Officer's written consent.

1078 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting
1079 Officer will notify the Contractor of any additional information required by the Contracting Officer for
1080 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely
1081 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in
1082 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay
1083 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which
1084 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1085 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and

1086 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting
1087 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1088

1089

FEDERAL LAWS

1090 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity
1091 or application in connection with the performance of the terms and conditions of this Contract of any Federal
1092 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this
1093 Contract unless and until relief from application of such Federal law or regulation to the implementing
1094 provision of the Contract is granted by a court of competent jurisdiction.

1095

NOTICES

1096 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1097 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1098 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf
1099 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Fresno
1100 County Waterworks District No. 18, PO Box 92, Friant, California 93626. The designation of the
1101 addressee or the address may be changed by notice given in the same manner as provided in this Article for
1102 other notices.

1103

CONFIRMATION OF CONTRACT

1104 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree
1105 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The
1106 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and
1107 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and
1108 adjudging it to be lawful, valid, and binding on the Contractor.

1109 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1110 year first above written.

THE UNITED STATES OF AMERICA

By: /s/ William H. Luce, Jr.
Acting Regional Director, Mid-Pacific Region
Bureau of Reclamation

(SEAL)

FRESNO COUNTY WATER WORKS
DISTRICT NO. 18

By: /s/ Dan Pearce
President of the Board of Directors

Attest:

By: /s/ Georgie Betitor
Secretary of the Board of Directors

(I:Fres18.wpd)

Contract No. 14-06-200-5904-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. 14-06-200-5904-LTR1

EXHIBIT B
[Initial Rates and Charges]